

## **EXHIBIT B**

### **PROPOSED BID PROCEDURES**

#### **BIDDING PROCEDURES**

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed in connection with an auction (the “Auction”) for the sale (the “Sale”) of assets and (the “Purchased Assets”) of ProTom International, Inc. and ProTom International, LLC (the “Debtors”). At a hearing following the Auction, the Debtors will seek entry of an order (the “Sale Order”) from the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) authorizing and approving the Sale to the Qualified Bidder (as defined below) that the Debtors determine to have made the highest or otherwise best bid.

#### **I. Assets to be Sold**

As described in the Purchase Agreement, all of the Debtors’ right, title and interest in all of the Debtors’ properties and assets of every kind and description, tangible or intangible and wherever located, except for Excluded Assets, including the following:

- (a) All tangible personal property of the Business, wherever located, including, but not limited to, all machinery, equipment, tools, fixtures, parts, supplies, furniture, furnishings, motor vehicles, Inventory and computers, including the tangible personal property which is listed on Schedule 2.1(a);
- (b) All Leased Real Property which is listed on Schedule 2.1(b);
- (c) The Transferred Intellectual Property Rights;
- (d) All of the customer Contracts listed on Schedule 2.1(d) and all rights of any kind relating thereto including rights to payments thereunder (the “Customer Contracts”);
- (e) All of the vendor Contracts listed on Schedule 2.1(e) and all rights of any kind relating thereto (the “Vendor Contracts”);
- (f) All Contracts listed on Schedule 2.1(f) and all rights of any kind relating thereto (the “Other Contracts”);
- (g) All Permits listed on Schedule 2.1(g), but only to the extent such Permits may be transferred under applicable Law;
- (h) All of Seller's rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;
- (i) All prepaid expenses, credits, advance payments, security, deposits, charges, sums and to the extent related to any Purchased Assets;

(j) Originals, or where not available, copies, of all books and records, including books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Authority), sales material and records, strategic plans, internal financial statements and marketing and promotional surveys, material and research, that relate to the Business or the Purchased Assets, other than books and records set forth in Section 2.2(e); and

(k) All goodwill associated with any of the assets described in the foregoing clauses.

Retained Assets. Notwithstanding anything to the contrary in this Agreement, Sellers shall not sell, convey, transfer, assign or deliver, and Buyer shall not purchase or acquire any assets of Sellers other than the Purchased Assets. Without limiting the generality of the foregoing, the Buyer shall not acquire any of the following assets (collectively, the “Retained Assets”):

(a) All cash, bank deposits, bank accounts, certificates of deposit, pre-paid amounts with third parties, vendor deposits, customer deposits, performance bonds and/or cash equivalents (including marketable securities and short term investments);

(b) All rights of Sellers under this Agreement or the Retained Contracts;

(c) All insurance policies of each Seller and all rights thereunder (including, without limitation, any and all insurance refunds or claims made under such policies relating to the Purchased Assets on or before the Closing Date);

(d) All Tax assets and attributes and all claims which any Seller, an Affiliate of any Seller, or the Business may have, on or after the date hereof, against any Governmental Authority for refund or credit of any type with respect to Taxes applicable to the Business for periods ending on or prior to the Sale Date, including, without limitation, any Tax refund due to Sellers with respect to periods ending prior to the Sale Date;

(e) The organizational documents, minute books, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, personnel records, stock records and Tax Returns of Sellers and other similar books and records, financial records, books of account, bank and brokerage records and statements and any other books and records which Sellers are prohibited from disclosing or transferring to Buyer under applicable Law and is required by applicable Law to retain;

(f) All rights to any action, suit or claim of any nature available to or being pursued by Sellers, whether arising by way of counterclaim or otherwise;, including but not limited to (i) claims for breach of contract, tort, breach of fiduciary duty and (ii) all Sellers’ claims or causes of action, including those vested in any Seller under Sections 541, 542, 544,

545, 547, 548 and 549 (and, to the extent applicable for remedies, Sections 550 and 551) of the Bankruptcy Code; and

(g) The assets, properties and rights specifically set forth on Schedule 2.2(f).

## **II. Submissions and Due Diligence**

Any person or entity that is interested in becoming a potential purchaser of the Purchased Assets, including, without limitation, each direct or indirect equity holder of such prospective purchaser or holder and each trustee and beneficiary of any trust included therein (each a "Potential Bidder") shall notify the Debtors and shall submit the following information;

### **A. Confidentiality Agreement**

If not previously executed and delivered in connection with the Sale, each Potential Bidder shall provide an executed confidentiality agreement substantially in the form annexed hereto as Exhibit [REDACTED] with such changes as are reasonably acceptable to the Debtors (the "Confidentiality Agreement").

### **B. Due Diligence**

A Potential Bidder or Potential Bidder Group, as the case may be, who has executed a Confidentiality Agreement shall be given access to a data room for such purpose.

To the extent practicable, the Debtors shall provide each Potential Bidder or Potential Bidder Group, as the case may be, who has executed a Confidential Agreement with access to (i) the same confidential evaluation materials and information provided by the Debtors to each other Potential Bidder and the Proposed Buyers (as defined below) and (ii) such other financial information and other data related to the Debtors as the Potential Bidder may reasonably request, which requests may include reasonable access to the Debtors' senior management and advisors and shall be deemed to include, in any event, the Debtors' good faith estimate of the potential cure costs and rejection damages associated with each material contract and lease subject to assumption in conjunction with the Sale.

## **III. Submission of Bids**

Each offer, solicitation or proposal (a "Bid") from a Potential Bidder or Potential Bidders Group, as the case may be, must be in writing and must be received by (a) the Debtors' counsel, Debtor's counsel, Jackson Walker L.L.P., 901 Main Street, Suite 6000, Dallas, Texas 75202 (Attn: Kenneth Stohner, Jr., ([kstohner@jw.com](mailto:kstohner@jw.com))); (b) the counsel to Michelson Capital Partners \_\_, Reed Smith, 599 Lexington Avenue, New York, New York 10022 (Attn: Michael Venditto, ([mvenditto@reedsmith.com](mailto:mvenditto@reedsmith.com))); (c) Akin Gump Strauss Hauer & Feld LLP, 1700 Pacific Avenue, Suite 4100, Dallas, TX 75201-4624, Attention: Charles Gibbs and Michael Cooley, Facsimile (214) 969-4343, Co-Counsel for the DIP Lender, and (d) counsel to the Official Committee of Unsecured Creditors (the "UCC"), [insert law firm name & address] (Attn: insert name & email address); (collectively, the "Notice Parties"). (collectively, the "Notice Parties"), on or before 5:00 p.m. (prevailing Central time) on July \_\_, 2015 (the "Bid Deadline"). As detailed in subparagraphs A through C below, a Potential Bidder or Potential Bidders Group, as the case may be, that submits a Bid on or before the Bid Deadline that

includes an executed mark-up of the Purchase Agreement (as defined below), and a Deposit (as defined below), shall be deemed an “Acceptable Potential Bidder.”

A Potential Bidder or a Potential Bidders Group, as the case may be, that submits a Bid after the Bid Deadline shall not constitute an Acceptable Potential Bidder. Each Bid must be accompanied by:

**A. Mark-Up of Purchase Agreement**

To facilitate the Auction and to assist the Debtors’ CEO and [REDACTED] (collectively, the “Debtors Auction Team”) and other interested parties in assessing the terms of each Bid, each Potential Bidder or Potential Bidders Group, as the case may be, must work from the Asset Purchase Agreement (the “Purchase Agreement”) to prepare its bid and shall submit as part of its Bid, a fully executed asset purchase agreement, marked to show all proposed changes to such Purchase Agreement. Each Bid shall include a summary term sheet including a summary of the material terms proposed to be included in the Bid. The Purchase Agreement is attached to the Order (I) Approving the Procedures for (A) the Sale of Substantially All Assets (B) The Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (C) the Establishment of Cure Amounts, (II) Approving Form of Notice and (III) Setting a Hearing Date for the Approval of the Sale (the “Bidding Procedures Order”) as Exhibit [REDACTED], and is also available on the main docket of these cases.

To the extent practicable, the Debtors will make members of senior management and advisors available to discuss the terms of a Bid and seek to provide to each Acceptable Potential Bidder, the disclosure schedules to the Acceptable Potential Bidder’s Bid in connection with the preparation of such Bid.

**B. Deposit**

Potential Bidders will be required to submit to the Debtors, in immediately available funds, letter of credit or other form of security reasonably acceptable to Debtors, a good faith deposit in an amount equal to US \$1,500,000 (the “Deposit”) at the time the Potential Bidder submits a Bid; provided, however, that no Deposit shall be required of a party submitting a credit bid for an amount in excess of \$1,500,000. The Deposit shall be returned to the respective Potential Bidder if such bidder is determined not to be a Qualified Bidder, or following the Auction if the Acceptable Potential Bidder is a Qualified Bidder but not the Backup Bidder (as defined below) or the Successful Bidder (as defined below). The Deposit shall be returned to the Backup Bidder on the earlier of: (i) the closing of the Sale to the Successful Bidder (as defined below) and (ii) 45 days after the close of the Auction.

**IV. Determining Qualified Bids and Qualified Bidders**

**A. Terms and Conditions of a Qualified Bid**

In addition to the requirements for an Acceptable Potential Bidder, in order for a Bid from an Acceptable Potential Bidder to be deemed a “Qualified Bid” and for the Acceptable Potential Bidder to be deemed a “Qualified Bidder”, the Bid must: (i) satisfy each of the conditions listed below in paragraphs 1 through 6 and (ii) be submitted on or before the Bid

Deadline. A Bid submitted after the Bid Deadline shall not constitute a Qualified Bid. In addition, the Prepetition Secured Lender shall have the right, but not the obligation, pursuant to Section 363(k) of the Bankruptcy Code to credit bid up to the full amount of their secured claim.

The Debtors Auction Team may determine in its reasonable discretion, after consultation with the Official Committee of Unsecured Creditors, and whether an Acceptable Potential Bidder's Bid is a Qualified Bid.

Promptly after determining that any Acceptable Potential Bidder does not appear to be a Qualified Bidder, the Debtors Auction Team shall notify such Bidder of this determination and, not acting in bad faith, shall seek to resolve any impediment to the Acceptable Potential Bidder's becoming a Qualified Bidder if possible.

1. Financial Capability: To the extent not previously provided, a Bid shall contain evidence (in the form of binding commitment letters, guarantees or otherwise) that the Acceptable Potential Bidder is able to fulfill all obligations in connection with the contemplated transactions.

2. Corporate Authority: A Bid shall contain written evidence of each Acceptable Potential Bidder's boards of directors' (or comparable governing bodies) approval of the contemplated transaction.

3. Nature of Bids for Purchased Assets and Minimum Overbid: The Bid must describe the amount of cash consideration to be paid and identify the Purchased Assets to be included in the bid.

The Bid must also include the assumption of all liabilities and financial obligations assumed in the Purchase Agreement. Those liabilities include:

(a) All of Sellers' liabilities, responsibilities and obligations under the Assumed Contracts;

(b) All liabilities of Sellers accruing on or after the Filing Date; and

(c) All claims, liabilities, responsibilities, obligations, costs and expenses arising in any way out of the operation of the Business or the ownership or operation of the Purchased Assets on or after the Sale Date, including, without limitation, (i) any and all Taxes arising out of or attributable to the operation or ownership of the Purchased Assets on or after the Sale Date, (ii) any and all claims associated with the use of any Purchased Assets, including liability to any third party for any injury or damage to persons or property and any damage to the asset itself, due to any condition of, defect in, or design of the asset in question, latent or otherwise, whether such condition, defect, or design now exists or hereafter occurs and (iii) any and all warranty obligations or claims relating to warranties provided to customers of the Business on or prior to the Sale Date; and

(d) All liabilities associated with the Transferred Employees accruing after the Closing, including with respect to employee benefits, compensation or other arrangements with respect to any Transferred Employee.

4. Asset Purchase Agreement and Ancillary Agreements: As stated above in Section III.A, a Bid must include a fully executed form of asset purchase agreement marked against the Purchase Agreement and must also include any agreements ancillary to the Sale, each executed by an Acceptable Potential Bidder.

5. Approval: Contain a representation that the bid is not conditional on any unperformed due diligence, debtor equity financing or any corporate approval.

6. Other Bid Requirements: A Bid must: (i) provide that the bidder's offer is irrevocable until the earlier of (x) consummation of the Sale of the Purchased Assets, (y) the close of the Auction unless the Potential Bidder is selected as the Successful Bidder or the Backup Bidder and (z) 45 days after the close of the Auction if the Potential Bidder is selected as the Backup Bidder; (ii) contain the form of Sale Order (marked against the proposed order) the bidder would request the Debtors to seek court approval of at the Sale Hearing; and (iii) include evidence of the bidder's ability to provide adequate assurance of future performance of such contracts, permits and licenses it would require the Debtors to assume and assign.

#### **B. Qualified Bidders**

Only the Acceptable Potential Bidders who have satisfied the foregoing requirements, shall be Qualified Bidders. If no Qualified Bid is timely received, the Debtors will not conduct an Auction.

#### **C. Notification by the Debtors of the Best Qualified Bid**

On or prior to 5:00 p.m. (prevailing Eastern time) on the July 13, 2015, the Debtors Auction Team shall provide each Qualified Bidder that has submitted a Qualified Bid: (i) written notice of the Auction and (ii) notice of the Qualified Bid with which the Debtors intends to commence the Auction (the "Best Qualified Bid") and (iii) copies of all Qualified Bids.

### **V. The Auction**

If more than one Qualified Bid is timely received, the Auction will be conducted at the offices of Jackson Walker L.L.P., 901 Main Street, Suite 6000, Dallas, Texas 75202 (Attn: Kenneth Stohner, Jr., ([kstohner@jw.com](mailto:kstohner@jw.com)) commencing on July 15, 2015 to determine the highest or otherwise best bid with respect to the Purchased Assets.

#### **A. Participation in the Auction**

Only Qualified Bidders who have submitted a Qualified Bid shall be eligible to participate in the Auction.

#### **B. The Auction Process**

All Bids made at the Auction after the commencement thereof (each, an "Overbid") shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtors Auction Team shall maintain a transcript of all Overbids made and announced at the Auction, including the Successful Bid (as defined below). The Debtors Auction Team, in its reasonable discretion, may extend the Auction deadline and/or adjourn, continue or suspend the Auction and/or the hearing to approve the Sale

of the Purchased Assets for any reason, including to seek further clarification from the Bankruptcy Court regarding any issues, without further order of the Bankruptcy Court, by filing a notice with the Bankruptcy Court and serving such notice on all Qualified Bidders.

The Debtors Auction Team shall announce at the Auction the material terms of each Overbid, and in consultation with the UCC, the total consideration offered in each such Overbid to provide a floor for further bidding. The current highest or best offer for the Purchased Assets, as determined by the Debtors Auction Team in consultation with the UCC shall represent the new Best Qualified Bid. A Qualified Bidder need not make an Overbid in any particular Auction round to maintain their ability to make a later Overbid.

Any Overbid shall be made in overbid increments of at least US \$1,000,000 greater than the Best Qualified Bid.

Except as modified below, an Overbid must comply with the conditions for a Qualified Bid as set forth above.

To the extent not previously provided (which shall be determined by the Debtors in consultation with the UCC, a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the UCC) demonstrating such Qualified Bidder's ability to close the proposed transaction.

Except as expressly provided herein, the procedures set forth herein cannot be amended or modified without the approval of the Bankruptcy Court. The Bankruptcy Court shall retain exclusive jurisdiction to construe these Bidding Procedures and determine any disputes arising under them.

## **VI. Identification of the Successful Bidder and Acceptance of Successful Bid**

### **A. Identification of the Successful Bidder**

At the close of the Auction, the Debtors Auction Team, in consultation with the UCC, shall determine and announce which Qualified Bidder had the highest or best bid (the "Successful Bid," and such bidder being the "Successful Bidder"). The Debtors Auction Team reserves the right to determine, in its reasonable business judgment and in consultation with the UCC, which bid is the highest or otherwise best (recognizing that, in determining same, a critical consideration shall be which bid provides the greatest net proceeds available for distribution to creditors by the estates.

After the Debtors Auction Team, in consultation with the UCC, so determines the Successful Bid, the Auction will be closed. The Debtors Auction Team, in consultation with the UCC, will then determine and announce which bid has been determined to be the second highest or otherwise best bid (the "Backup Bid" and such bidder being the "Backup Bidder"). In determining which bid is the Backup Bid, the Debtors, in consultation with the UCC, will use its reasonable business judgment.

Notwithstanding anything herein to the contrary, the Debtors, in its reasonable discretion and in consultation with the UCC, reserves the right to reject at any time prior to entry of a court order approving an offer, without liability, any offer (other than the offer submitted by the Proposed Buyers) that the Debtors deems to be: (x) inadequate or insufficient, (y) contrary to the best interests of the Debtors and its estate, or (z) with the advice of counsel, not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or procedures set forth therein or herein.

The presentation of a particular Bid to the Bankruptcy Court for approval shall not constitute the Debtors' acceptance of the Bid. The Debtors will be deemed to have accepted the Bid only when the Bid has been approved by the Bankruptcy Court at the Sale Hearing.

**B. Acceptance of Bid From Successful Bidder**

The Debtors presently intends to sell the Purchased Assets to the Successful Bidder, pursuant to the terms of the Successful Bid. The Debtors shall be bound by the Successful Bid only when such Bid has been approved by the Bankruptcy Court at the Sale Hearing.

Except as otherwise provided in the Successful Bid agreed to by the Debtors, all of the Debtors' right, title and interest in and to the Purchased Assets shall be sold free and clear of all liens, claims, encumbrances, and interests thereon and there against (except Permitted Encumbrances) (collectively, the "Transferred Liens"), with such Transferred Liens attaching to the proceeds of the Purchased Assets with the same validity and priority as the Transferred Liens had on the Purchased Assets immediately prior to the Sale.

**VII. The Sale Hearing**

The Sale Hearing shall be held in the Bankruptcy Court on **July \_\_, 2015** and may be adjourned from time to time without further notice to creditors or parties in interest other than an announcement in open court at the Sale Hearing. Any objections to the approval of the sale of the Purchased Assets shall be argued at the Sale Hearing.

**VIII. Closing with the Backup Bidder(s)**

Without any further order of the Bankruptcy Court after Confirmation, if for any reason the Successful Bidder fails to consummate the Sale within such time as is determined reasonable by the Debtors' Auction Team, in its sole discretion after consultation with the UCC, the Backup Bidder will be deemed to have submitted the highest or best bid and the Debtors and the Backup Bidder are authorized to effect the Sale to the Backup Bidder as soon as is commercially reasonable.

Following the Sale, (i) if such failure to consummate the Sale is the result of a breach by the Successful Bidder or the Backup Bidder, the Successful Bidder or the Backup Bidder, as the case may be, shall be deemed to have forfeited its Deposit and the Debtors additionally reserves the right to seek all available damages from any defaulting Bidder, and (ii) if such failure to consummate the Sale is the result of a breach by the Debtors, the Successful Bidder or Backup Bidder, as the case may be, shall have no recourse against the Debtors other than for recovery of its deposit.

Dated:

[insert signatures]